

FCC Appeal of USAC Decision and Request for Waiver

Nevada Virtual Academy – BEN 16058078 – FY2018

October 29, 2018

Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554 *(submitted electronically via ECFS)*

Appeal – CC Docket Nos. 96-45 and 02-6

USAC Appeal Decision Date: November 6, 2018

Form 471 Number: 181003354

Funding Request Number (FRN): 1899004886

Funding Year: 2018

Billed Entity Name: NEVADA VIRTUAL ACADEMY

BEN: 16058078

Contact Information:

Contact Person Name: Don Dietrich
Contact Person Phone: 314-378-1667
Contact Person E-Mail: ddietrich@e-rateprofessionals.com

Decision being appealed: USAC's Denial of our Appeal #117069 re: denial of 471. We are requesting a review of the funding denial and a waiver of the rule regarding eligibility of "products and services to be provided to residential facilities".

Text from USAC Denial: USAC denied your funding request because the Program rules do not allow for products and services to be provided to residential facilities or for wireless remote access to products and services from a non-school or non-library building. Entity number 16058078 Nevada Virtual Academy includes residential facilities and therefore is ineligible to receive funding. USAC has given you an opportunity to provide the appropriate additional documentation demonstrating your entity's eligibility to receive funding under this program and you failed to do so. Accordingly, your funding request was denied. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied... (full copy of Revised FCDL is attached below).

Background:

Nevada Virtual Academy is a unique k-12 school in that most of our students and our teachers work exclusively from their homes. We ask FCC to consider that this unique configuration justifies the teacher's offices as eligible sites – even though they are technically located within residential facilities. These services provide business class Internet services to link teachers with students. The remote lines in this FRN are to the home-offices of teachers and thus should be considered eligible NIF locations. We disagree with SLD's decision to deny our FRN.

FCC Appeal of USAC Decision and Request for Waiver

Nevada Virtual Academy – BEN 16058078 – FY2018

Details:

On April 12, 2018, as part of our PIA review we were asked to demonstrate the school's eligibility.

On April 24, 2018 we responded with a re-statement of reasoning that these lines were to eligible sites (i.e. offices/NIFs).

On June 11, 2018 we received notice in PIA that our application would be denied. We responded on June 13 with a request for additional time to respond.

On June 15, 2018 we received our denial notice.

Additional Factors:

We ask the FCC to consider these factors in their decision:

1. Nevada Virtual Academy is a unique institution and should be allowed the same benefits as other eligible k-12 schools – i.e. the providing of dedicated Internet access for its staff.
2. All of the services requested are for eligible services and are clearly for educational purposes.
3. We believe that part of the reason for the denial is to avoid potential waste, fraud and abuse issues if 'at-home' Internet were being funded. This is clearly not the case here.
4. We contend that the locations being served should qualify as staff offices which are clearly eligible locations. This is not a request to provide Internet access to residences.
5. The funding being requested is for the ONLY Internet access that our staff receives. These are not additional lines but the sole path of access to their students.

Summary and Requested Action: We request SLD to re-open the review of our application and reconsider their denial based on the fact that these lines in question are providing services to the teacher's home-offices (not students) which should be considered eligible. We understand that this is a unique situation but virtual schools are unique.

Sincerely,

(Filed electronically via ECFS)

Don Dietrich

E-Rate Consultant to Nevada Virtual Academy

314-378-1667

ddietrich@e-rateprofessionals.com

Included below:

Att 1: USAC's Denial of Appeal (RFCDL) dated September 6, 2018

Att 2: NVA Appeal to USAC dated July 26, 2018

Revised Funding Commitment Decision Letter

Funding Year 2018

Contact Information:

Donald Dietrich
NEVADA VIRTUAL ACADEMY
4801 S Sandhill Road
LAS VEGAS, NV 89121
ddietrich@e-rateprofessionals.com

BEN: 16058078**Post Commitment Wave:** 6

Totals

Original Commitment Amount	\$0.00
Revised Commitment Amount	\$0.00

What is in this letter?

Thank you for submitting your post-commitment request for Funding Year 2018 Schools and Libraries Program (E-rate) funding. Attached to this letter, you will find the revised funding statuses and/or post commitment changes to the original Funding Commitment Decision Letter (FCDL) you received. Below are the changes that were made:

- Appeals

The Universal Service Administrative Company (USAC) is providing this information to both the applicant(s) and the service provider(s) so that all parties are aware of the post-commitment changes related to their funding requests and can work together to complete the funding process for these requests.

Next Steps

1. **File the FCC Form 486**, Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form, for any FRNs included in this RFCDL, if you have not already done so. Please review the CIPA requirements and file the form(s).



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- o **If USAC approved funding on an FRN in your original FCDL**, the deadline to submit the FCC Form 486 is 120 days from the date of the original FCDL or from the service start date (whichever is later).
 - o **If a new FRN was created for this RFCDL or funding was not approved on an FRN in your original FCDL but is approved in this RFCDL**, the deadline to submit the FCC Form 486 is 120 days from the date of this RFCDL or from the service start date (whichever is later).
2. **Invoice USAC**, if you or your service provider have not already done so. Work with your service provider(s) to determine if your bills will be discounted or if you will request reimbursement from USAC after paying your bills in full.
- **If you (the applicant) are invoicing USAC:** You must pay your service provider(s) the full cost for the services you receive and file the [FCC Form 472](#), the Billed Entity Applicant Reimbursement (BEAR) Form, to invoice USAC for reimbursement of the discounted amount.
 - **If your service provider(s) is invoicing USAC:** The service provider(s) must provide services, bill the applicant for the non-discounted share, and file the [FCC Form 474](#), the Service Provider Invoice (SPI) form, to invoice USAC for reimbursement for the discounted portion of costs. Every funding year, service providers must file an [FCC Form 473](#), the Service Provider Annual Certification Form, to be able to submit invoices and to receive disbursements.
 - **To receive an invoice deadline extension, the applicant or service provider** must request an extension on or before the last date to invoice. **If you anticipate, for any reason, that invoices cannot be filed on time**, USAC will grant a one-time, 120-day invoice deadline extension if timely requested.

How to Appeal or Request a Waiver of a Decision

You can appeal or request a waiver of a decision in this letter **within 60 calendar days** of the date of this letter. Failure to meet this deadline will result in an automatic dismissal of your appeal or waiver request.

Note: The Federal Communications Commission (FCC) will not accept appeals of USAC decisions that have not first been appealed to USAC. However, if you are seeking a waiver of E-rate program rules, you must submit your request to the FCC and not to USAC. USAC is not able to waive the E-rate program rules.

- **To submit your appeal to USAC**, visit the Appeals section in the [E-rate Productivity Center \(EPC\)](#) and provide the required information. USAC will reply to your appeal submissions to confirm receipt. Visit USAC's [website](#) for additional information on submitting an appeal to USAC, including step-by-step instructions.
- **To request a waiver of the FCC's rules or appeal USAC's appeal decision**, please submit it to the FCC in proceeding number CC Docket No. 02-6 using the [Electronic Comment Filing System](#) (ECFS). Include your contact information, a statement that your filing is a waiver request,



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identifying information, the FCC rule(s) for which you are seeking a waiver, a full description of the relevant facts that you believe support your waiver request and any related relief, and any supporting documentation.

For appeals to USAC or to the FCC, be sure to keep a copy of your entire appeal, including any correspondence and documentation, and provide a copy to the affected service provider(s).

Obligation to Pay Non-Discount Portion

Applicants are required to pay the non-discount portion of the cost of the eligible products and/or services to their service providers. Service providers are required to bill applicants for the non-discount portion of costs for the eligible products and/or services. The FCC stated that requiring applicants to pay the non-discounted share of costs ensures efficiency and accountability in the program. If using the BEAR invoicing method, the applicant must pay the service provider in full (the non-discount plus discount portion) **before** seeking reimbursement from USAC. If using the SPI invoicing method, the service provider must first bill the applicant **before** invoicing USAC.

Notice on Rules and Funds Availability

The applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program and the FCC's rules. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds.



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Revised Funding Commitment Decision Overview

Funding Year 2018

Funding Request Number (FRN)	Service Provider Name	Request Type	Revised Committed	Review Status
1899004886	GTT Americas LLC	Appeals	\$0.00	Denied



BEN Name: NEVADA VIRTUAL ACADEMY

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Post Commitment Request Number: 117069	Post Commitment Request Type: Appeals	Post Commitment Decision: Denied
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FRN: 1899004886	Service Type: Data Transmission and/or Internet Access	Original Status: Denied	Revised Status: Denied
FCC Form 471: 181003354			

Dollars Committed			
Monthly Cost		One-Time Cost	
Months of Service	12		
Total Eligible Recurring Charges	\$328,816.80	Total Eligible One Time Charges	\$0.00
Total Pre-Discount Charges		\$328,816.80	
Discount Rate		60.00%	
Revised Committed Amount		\$0.00	

Dates		Service Provider and Contract Information	
Service Start Date	7/1/2018	Service Provider	GTT Americas LLC
Contract Expiration Date	6/30/2020	SPIN (498ID)	143049469
Contract Award Date	5/4/2017	Contract Number	
Service Delivery Deadline	6/30/2019	Account Number	
Expiration Date (All Extensions)		Establishing FCC Form 470	170068081

Consultant Information	
Consultant Name	
Consultant's Employer	
CRN	

Revised Funding Commitment Decision Comments:
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Post Commitment Rationale:

USAC denied your funding request because the Program rules do not allow for products and services to be provided to residential facilities or for wireless remote access to products and services from a non-school or non-library building. Entity number 16058078 Nevada Virtual Academy includes residential facilities and therefore is ineligible to receive funding. USAC has given you an opportunity to provide the appropriate additional documentation demonstrating your entity's eligibility to receive funding under this program and you failed to do so. Accordingly, your funding request was denied. In your appeal, you did not show that USAC's determination was incorrect. Consequently, your appeal is denied. FCC rules provide that only schools meeting the statutory definition



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of elementary school or secondary school as defined in section 47 C.F.R. sec. 54.500(c) or (k) and not excluded under paragraphs (a)(2) or (a)(3) of this section shall be eligible for discounts on telecommunications and other supported services. See 47 C.F.R. sec. 54.501(a)(1). The FCC has defined a school as including individual schools, school districts, and consortia of schools and/or school districts. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9002, FCC 97-157 para. 425, n.1087 (rel. May 8, 1997). An elementary school means an elementary school as defined in 20 U.S.C. § 7801(18), a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law. A secondary school means a secondary school as defined in 20 U.S.C. § 7801(38), a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12. See 47 C.F.R. sec. 54.500(c) and (k). The FCC's Bootheel Consortium Order directed USAC to permit the applicant to revise its funding request to remove the services for ineligible entities or allow the applicant to provide additional documentation to show why the relevant entity is eligible within 15 calendar days from the date of receipt of notice in writing by USAC. See Requests for Review of Decisions of the Universal Service Administrator by Bootheel Consortium, Silver City, New Mexico, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-309634, et al., CC Docket No. 02-6, Order, 22 FCC Rcd 8747, FCC 07-62 para. 10 (May 8, 2007).

SLD Appeal
Nevada Virtual Academy FY2018

July 26, 2018

SLD Appeals – *Submitted Online*
Schools and Libraries Division — Correspondence Unit
100 South Jefferson Road
P.O. Box 902
Whippany, New Jersey 07981

Re: Letter of Appeal (*filed electronically*)

Contact Information:

Contact Person Name:	Don Dietrich
Contact Person Phone:	314-378-1667
Contact Person Fax:	636-692-5958
Contact Person E-Mail:	ddietrich@e-rateprofessionals.com

Other Required Information:

Funding Year:	2018
Applicant Name:	Nevada Virtual Academy
Billed Entity # :	16058078
Form 471 Application#:	181003354
FRN #	1899004886

SLD action being appealed

We are appealing the denial of this FRN on our Form 471 Application per the FCDL dated June 15, 2018.

Explanation from USAC FCDL

Each FCDL denial reads *“DR1: The FRN is denied because the Program rules do not allow for products and services to be provided to residential facilities or for wireless remote access to products and services from a non-school or non-library building. 16058078 includes residential facilities and therefore is ineligible to receive funding.”*

Background and basis for this appeal

This is the same situation that we faced in FY2015. The denial reason then was almost identical to that above (from 2015 FCDL *“The FRN is denied because the Program rules do not allow for products and services to be provided to residential facilities or for remote access to products and services from a non-school or non-library building. Nevada Virtual Academy is providing remote access to non-school or non-library building and therefore is ineligible to receive funding.”*)

SLD Appeal

Nevada Virtual Academy FY2018

Background and basis for this appeal (cont'd)

We appealed that decision back in 2015 and were approved based on the fact that Nevada Virtual Academy is a recognized K-12 entity in Nevada. We were asked to provide proof of this during PIA and we did so. Therefore we maintain that at least some of the services that we requested are eligible because they service our headquarters. These services provide basic telephone and Internet services to link teachers with students. The remote lines in this FRN are to the home-offices of teachers and thus should be considered eligible NIFs. We disagree with SLD's decision to deny our FRN. In addition we were not given adequate time in the PIA review process to defend our application.

Details of this appeal

On April 12, 2018, as part of our PIA review we were asked to demonstrate the school's eligibility.

On April 24, 2018 we responded with a re-statement of our 2015 appeal reasons for eligibility and included a copy of that appeal.

On June 11, 2018 we received notice in PIA that our application would be denied. We responded on June 13 with a request for additional time to respond.

On June 15, 2018 we received our denial notice.

We don't know of any rule changes since 2015 that would justify this denial and we ask SLD to consider the precedent and approve this request.

Summary and Requested Action:

We request SLD to re-open the review of our application and reconsider their denial based on the fact that these lines in question are providing services to the teacher's home-offices (not students) which should be considered eligible. We understand that this is a unique situation but Virtual schools are unique.

Sincerely,
(filed electronically via SLD website)
Don Dietrich
E-Rate Consultant to Nevada Virtual Academy